

Remarks

By the foregoing amendments, claims 220 and 359 are sought to be amended solely to delete one or more embodiments from these previously allowed claims. Support for these amendments can be found throughout the specification, including in the claims as originally filed, and in the application as published (US 2003/0175290 A1) at Examples 2-12 at pages 40-54; Example 16 at pages 55-56; Examples 18-53 at pages 57-76; and Examples 55-59 at pages 78-82.

Applicants also note that the negative proviso (“wherein said self antigen is not amyloid β or a peptide or fragment thereof”) contained in amended claims 220 and 359 is not described *in haec verba* in the present specification. However, such provisos need not be supported by specific language in the specification in order to be fully supported:

That what [patent applicants] claim as patentable to them is *less* than what they describe as their invention is not conclusive if their specification also reasonably describes that which they do claim.

In re Wertheim, 541 F.2d 257, 263 (C.C.P.A. 1976) (emphasis in original). Moreover, it has long been established law that excluding from a claim one or more species that are encompassed by a described genus is not contrary to the written description requirement of 35 U.S.C. § 112, first paragraph:

The notion that one who fully discloses, and teaches those skilled in the art how to make and use, a genus and numerous species there within, has somehow failed to disclose, and teach those skilled in the art how to make and use, that genus minus two of those species, and has thus failed to satisfy the requirements of § 112, first paragraph, appears to result from a hypertechnical application of legalistic prose relating to that provision of the statute.

In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 195, 196 (C.C.P.A. 1977). Hence, since the present specification clearly describes the subject matter that *is* encompassed by amended claims 220 and 359, the negative proviso in these claims excluding certain subject matter disclosed in the present specification and previously allowed in this case does not render these claims subject to a rejection under 35 U.S.C. § 112, first paragraph.

Thus, the foregoing amendments introduce no new matter, and their entry and consideration are respectfully requested. Upon entry of the foregoing amendments, claims 220-262, 265-272, 275-280, 283-285, 292-297, 300-306, 309-316, 319, 320, 329-332, and 335-465 are pending, with claims 220, 359, 362 and 463 being the independent claims. Applicants note that the claims as previously pending in this application were allowed in the Notice of Allowance issued August 25, 2006. Thus, since the amendments being sought to these allowed claims are minor in nature and represent only the cancellation of previously allowed subject matter, Applicants respectfully assert that the present claims are in condition for immediate re-allowance. However, should the Examiner be inclined to subject the present claims to further examination on the merits, Applicants respectfully request that the Examiner contact Applicants' undersigned representative prior to initiating such further examination.

Conclusion

Prompt and favorable consideration of this Preliminary Amendment is respectfully requested. In view of the minor amendments being made to previously allowed claims, Applicants believe the present application is in condition for immediate allowance. If the Examiner believes, for any reason, that personal communication will expedite allowance of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

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